

Minutes - Woodbury County Board of Adjustment Meeting January 4, 2016

The meeting convened on the 4th of January, 2016 at 6:00 PM in the Board of Supervisors Meeting Room in the Court House, Sioux City, Iowa. Present were the following Board members: Robert Brouillette, JoAnne Sadler, Katie Colling, Dwight Rorholm and Kenneth Gard. Board Supervisor Jeremy Taylor monitored the meeting. Staff members John Pylelo and Dawn Norton were also in attendance. Present from the public were Randall Leuenhagen, John Marrinan, Elaine Deirup, Craig Deirup, Rodney Lieber, Ryan Callaghan, Nathan Connelly, Daniel and Rhonda Roberts, and Brian Vakulskas.

The first agenda item was the election of the Board of Adjustment's 2016 Chairperson Note: The 2015 V-Chairperson chaired the meeting until a 2016 chairperson is elected.

In an effort to provide additional transparency within county government your Board will continue the nomination and open vote process initiated in 2015. Even though a nomination process is not required should you wish to be considered for the 2016 Chairperson position you may wish to visit with another Board member requesting they nominate you. If made, any nomination must be seconded and then affirmed by vote from 3 or more Board members.

JoAnne Sadler made a motion to appoint Robert Brouillette as 2016 Chairperson. Katie Colling seconded the motion; motion carried 5-0.

Mr. Brouillette was then tasked with chairing the meeting.

The second agenda item was the election of the Board of Adjustment's 2016 Vice-Chairperson.

Robert Brouillette made a motion to nominate Katie Colling as 2016 Vice-Chairperson. Joann Sadler seconded the motion; motion carried 5-0.

The third agenda item was Any Citizen Wishing to be Heard on Non-Agenda Items.

There were no non-agenda items to be heard.

The next agenda item was approval of minutes of December 7, 2015 meeting.

Mrs. Colling made a motion to approve the minutes. Mrs. Sadler seconded the motion. Dwight Rohrolm abstained from voting. Motion carried 4-0.

The next agenda item is a Public Hearing and Permitting Approval Re: Conditional Use Permit for applicant Lieber Land Holdings, LLC for the staging and operation of earthen resources storage; processing; and resource extraction - borrow pit; GIS Parcel #874801200004 addressed 1141 225th Street, Sergeant Bluff.

The organizer of Lieber Land Holdings, LLC is Rodney D, Lieber. Mr Lieber has filed a Conditional Use Permit Application and a Grading Permit Application with Woodbury County. The applicant has retained the services of professional engineer Ryan Callaghan of Civil Engineers and Constructors, LLC. (CEC). CEC has offices in Dakota Dunes, SD. CEC staff is licensed as professional engineers in the states of Iowa, Nebraska and South Dakota.

Mr. Lieber owns other Iowa domestic corporations which provide excavation, grading and demolition services to construction projects. Those services include providing or removing earthen resource materials. Lieber searches for earthen materials at locations meeting approved soil specifications; in required quantities and in proximity to current or anticipated construction locations.

Haul road availability, road specifications and route distances between the storage/borrow sites and delivery locations are also criteria for Lieber in selecting any suitable storage/borrow location. In December 2015 Lieber Land Holdings, LLC (Lieber) purchased the rural Woodbury County parcel applicable to the CUP application request under consideration this evening. The application reflects the following proposed uses or activity on the parcel:

- The removal of up to 50,000 cubic yards of sand borrow.
- The replacement of the sand borrow with imported clay.
- A storage pile for up to 15,000 cubic yards of earthen resources material.
- A designated area for a concrete crushing operation.
- A designated area for the storage at any one time of up to 20,000 tons of uncrushed concrete.
- On site Tree Clearing/Minor Cleanup
- Potential Future Industrial Building Site Development
- Place 60,000 cubic yards of material onsite to increase the elevation of an eastern portion of the parcel by up to 4 feet.
- Leave the existing building site largely undisturbed except for tree clearing and minor cleanup.
- The drive currently servicing the parcel provides access from the north side of 225th St. The site plan shows the current drive location will be removed. A 40' radius 8" portland cement concrete drive to be installed approximately 35 feet to the east of the existing driveway. The location allows for an alignment with the city of Sioux City water treatment plant driveway to the south.
- The placement of an 18,000 cubic foot sediment basin within the northwestern quadrant of the parcel.

- The placement of a 40,000 cubic foot sediment basin within the southeastern quadrant of the parcel.
- The ability to pump water between basins as needed.
- Berm placement around the parcel's perimeter directing runoff to sediment basins.
- Placement of silt fence on eastern and southern perimeter of the parcel. Installation of additional silt fence as needed.

The application does not provide an ending date for any of the requested uses. As such the application is being processed as a permanent permit application request.

Woodbury County zoning ordinance (Section 3.03:4 - Page 37) provides that:

- Earthen Material Storage;
- *Resource Extraction - Borrow pits for earth materials operations;* and
- *Heavy Construction Services; Aggregate Crushing and Screening operations*

each require CUP approval. These uses provide for citizen and agency comment at public hearing prior to any CUP action by the county's Board of Adjustment.

The remaining requested uses and activity are permitted within the parcel's GI (General Industrial) zoning district designation and do not requiring conditional use permitting.

The location of the 18.5 acre parcel lies within the S ½ of the SW ¼ of the SE ¼ of Section 01 of Liberty West Township and at the northwest corner of the intersection of 225th Street with Andrew Avenue. The parcel is known as GIS parcel #874801200004.

The 1,317' by 650' parcel is adjacent (to the east and south) with Sioux City's corporate limits. The parcel zoning supports approval of each of the applied for conditional uses.

The parcel does not lie within any rural drainage district and is not within any designated special flood hazard area. The average corn suitability rating (CSR2) for the parcel is 64.15.

The proposed haul route from the parcel uses a hard surfaced portion of 225th Street roadway right-of-way abutting the parcel's south perimeter. If you are traveling east alternative haul route options occur at the intersection of 225th St. with paved Southbridge Drive. Another haul route option occurs further east at

225th St. and paved Port Neal Road. These intersections would allow haul road options to the north toward Sioux City and to the South toward the Port Neal Industrial Complex. Both north and south routes provide paved access to the Interstate 29 corridor providing Hwy 20 and Highway 75 bypass access.

County ordinances further require review by the county's Zoning Commission to determine if certain standards within Section 2.02-9.F are or can be met. On December 28, 2015 the Commissioners met and determined each of those standards could be met. They voted to recommend approval of the CUP permit providing that certain standards conditions be placed upon the permitting as your Board so determines. Further, the Commission recommends that your Board place any further conditions you determine prudent after considering public hearing testimony.

See the below language within the referenced ordinance sub-section that you are to use to evaluate the CUP application:

Section 2.02-9.F

- (1) *In order to grant a conditional use the Board of Adjustment must determine that:*
 - (a) *The conditional use requested is authorized as a conditional use in the zoning district within which the property is located and that any specific conditions or standards described as part of that authorization have been or will be satisfied.*
 - (b) *The proposed use and development will be in harmony with the general purpose and intent of this ordinance and the goals, objectives and standards of the general plan.*
 - (c) *The proposed use and development will not have a substantial or undue adverse effect upon adjacent property, the character of the neighborhood, traffic conditions, parking, utility facilities, and other factors affecting the public health, safety and general welfare.*
 - (d) *The proposed use and development will be located, designed, constructed and operated in such a manner that it will be compatible with the immediate neighborhood and will not interfere with the orderly use, development and improvement of surrounding property.*

- (e) *Essential public facilities and services will adequately serve the proposed use or development.*
 - (f) *The proposed use or development will not result in unnecessary adverse effects upon any significant natural, scenic or historic features of the subject property or adjacent properties.*
- (2) *Other considerations. In its review of conditional use requests, the Board of Adjustment shall consider whether, and to what extent:*
- (a) *The proposed use or development, at the particular location is necessary or desirable to provide a service or facility that is in the public interest or will contribute to the general welfare of the neighborhood or community.*
 - (b) *All possible efforts, including building and site design, landscaping and screening have been undertaken to minimize any adverse effects of the proposed use or development.*

Listed below is documentation we have attached which provides additional information on the conditional use application. Included are Zoning Commission findings:

1. The Lieber Conditional Use Permit Application received 12/01/2015 which includes:
 - A letter from professional engineer Ryan Callaghan of Civil Engineers and Constructors, Inc. (CEC) dated November 30, 2015. The letter provides information requested by the Planning and Zoning office staff and states why the applicant believes section 2.02-9F standards have been met.
 - Site Plan aerial with notes; CEC - Drawing C050 dated 12/01/2015.
 - Grading Plan aerial with notes; CEC - Drawing C100 dated 12/01/2015.
 - Grading Plan aerial with notes; CEC - Drawing C100 dated 12/01/2015 with proposed driveway relocation layer shown.

- Storm Water Pollution Prevention Plan (SWPPP) Aerial with notes; CEC - Drawing C110 dated 12/01/2015.
- SWPPP Basin Section Drawing; CEC drawing C111 with notes dated 12/01/2015.
- Aerial Mapping of haul routes; CEC prepared (undated).

2. Location within Woodbury Township TAM Mapping
3. Conditional Use Permit Application
4. Aerial Mapping of parcel
5. Aerial Mapping of building site
6. Area's Zoning District Mapping
7. Areas Soil Mapping
8. Borrow Location's Soil Mapping
9. CSR2 Report; Corn Suitability Rating
10. Parcel Information for GIS #8847 21 351 002
11. Portion of ordinance's Land Use Summary Table (Page 37 of ordinances)
12. Title opinion dated December 1, 2015 by Robert Rehan
13. Onsite Photographs
14. An e-mail dated December 18, 2015 from Grady Marx on behalf of his father Robert Marx, of Marx Development Company, LLC a property owner within 500'. In his e-mail Mr. Marx raises economic development, water table, drainage, fugitive dust and ROW impact issues.
15. A letter dated December 22, 2015 from Mr. Randy Leuenhagen of 2239 Andrew Ave. and a property owner within 500'. In his letter Mr. Leuenhagen raises concerns about the project's impact upon air quality.
16. A letter dated December 21, 2015 for Sioux City Mayor Bob Scott. The City of Sioux City is an adjacent property owner to the south. In his letter Mayor Scott raises the city's objection to the project due to certain of the proposed uses not being consistent with the city's 2005 Comprehensive Plan; impact concerns upon city infrastructure and improvements, fugitive dust concerns, visual impact concern; debris on city ROW concern; a negative impact on the sale or the development potential of city owned property; and a negative impact on the overall development potential of the area.
17. A e-mail from Planning and Zoning Director John Pylelo recapping his December 29, 2015 phone conversation with Alan Ivener representing the Max Ivener Family Trust. The Trust is an adjacent property owner to the west. Mr. Ivener's concerns relate to water table changes, drainage impact and erosion. He states his family opposes the project.

18.A memo dated December 30, 2015 from Ryan Callaghan P.E. related to a determination of the existing groundwater elevation as of 12/30/2015. The memo provides his professional opinion on the Lieber project's impact on groundwater elevation levels.

A letter was mailed notifying the twelve (12) property owners within 500' of the scheduled public hearing. As of the evening of December 30th no property owner, other than above stated, has responded with comment.

Also received is a letter dated 12/22/15 from Mark Lasnek, State of Iowa DNR, regarding NPDES General Permit #2; email dated 01/04/16 from Mr. Bruce Shostak, NIPC stating no problems with CUP; email from Mr. Mark Nahra, Woodbury County Engineer, stating his office has no issues with proposed CUP; copies of email exchanges between John Pylelo and Jeff Hanson, City of Sioux City, from 12/22/15 – 01/04/2016, and an email dated 01/04/16 from Nathan Connelly, United Commercial real estate, both stating they have no issues with the proposed CUP.

Staff Disclosure: Mr. Pylelo from Planning and Zoning would like to disclose for the record the following facts. During the period of August to November 2016 Mr. Pylelo was involved in a construction project at his personal residence. The applicant, through one or more of his companies, participated as a subcontractor in the project. Although the project is essentially completed it is expected Lieber employees will continue to provide erosion control assessment and maintenance for the project until the spring/summer of 2016.

Your Board is tasked with holding the required public hearing on the application; then deliberate and vote upon issuance of the requested Conditional Use Permit.

Section 2.01:9 Subsection E of the zoning ordinances allows your Board to approve, approve with conditions and limitations, or to deny the requested conditional use.

Comments:

Commissioner Joann Sadler stated for the record that Mr. Leuenhagen's son is married to her niece.

Mr. Randall Leuenhagen – 2239 Andrew Ave – states he has lived there for 27 years, he has a machine shop and wife has a craft shop. Randall listed his

concerns with the proposed use of the land as compromised air quality, and standing water concerns. If CUP is approved, conditions should be applied and enforced.

Mr. John Marrinan – 2226 Andrew Ave – has lived there for 11 years. His opinion is the concrete dust is potentially poisonous, and watering efforts to control dust would need to be continuous.

Mr. Rodney Lieber (Lieber Construction) – 14 Spanish Bay, Dakota Dunes, SD – and Ryan Callaghan (Civil Engineers) – 701 Pierce St, Ste 405, Sioux City, SD – addressed the issue of standing water. They explained there will be not standing water, there will be a sand bottom in the ponds, which the water will percolate through. The only water would be surface water run-off, from rain or dust control watering. Sediment ponds will be built if they begin grading operations. No water will be introduced into the ditches. Very small amount would be going into the aquifer, and no water from other sources will be introduced. Also, drainage from property to nearby land should be minimal. They would do studies to make sure Ivener property wouldn't be negatively affected.

Mr. Lieber understands the concerns regarding air quality from dust. He stated no trucks would be using Andrew Ave for access or egress. Concrete and rock surface driveway will prevent tracking on roadway. Concrete crushing is a possibility if there is a project close by, but that is not his number one intended use for the land. If he would do crushing, he would hire it out and they would need to get the permits for such work, which deal with dust issues. His water sources for dust control include a well on site, and he has talked to the City of Sioux City about putting a meter on a nearby hydrant.

Mr. Lieber has also talked with the City of Sioux City about future development of that area. If an interested business would be considering development on that property, he would work with the City to sell the property.

Katie Colling inquired about sand removal; Rodney stated it would be done as needed for projects. No specific job as of yet, but they would fill hole after taking material out, would not leave an open hole.

Mr. Rorholm asked about stock piling of concrete. Mr. Callaghan stated that there may be recycling of concrete projects close by, so it is possible that there may be some piles, but it is not his intent to leave piles of concrete of an extended period of time.

Mr. Lieber believes he can control dust from the area, open to suggestions. He would plant trees, etc., to provide screening. He would seed areas not being used and leave as many existing trees and grass as possible.

Mr. Leuenhagen and Mr. Marrianan have concerns with current loose dirt and sand on Andrew Ave from other traffic, from blowing wind. John Pylelo

suggested they continue to contact Secondary Roads when they are having issues.

Mr. Craig Deirup – 2500 41st St. – had questions as to where crushing operations, sand borrow and possible sedimentations ponds would be located on the property. Also, what guarantees the environmental laws will be followed. He is also concerned about dust issues.

Mr. Pylelo stated the CUP could have conditions placed, and conditions and permits would need to be followed. Reported violations would need to be investigated and enforced by Planning and Zoning and DNR.

Mr. Callaghan noted DNR General Permit #2, which addresses storm water discharge, has been obtained and further permits, such as concrete crushing will be obtained by Mr. Lieber before beginning such work.

A concern of Mr. Deirup (part owner of 2276 Allison Ave) is having asphalt products being introduced into the soil/water and possibly leaching into the groundwater. Ryan Callaghan noted that although there is a minimal chance Mr. Lieber will include asphalt handling into his operation, if he does Permit #3 would be applied for and received beforehand, as required.

Several methods of ground stabilization and dust control options were discussed by Mr. Callaghan such as planning of different types of seed depending on the season, and mulch application.

Mr. Marrinan wished to state that they don't want the road tore up for a long period of time, like when the City tore it up for Sabre work.

At this point, Joann Sadler made a motion to close the public hearing, Mr. Rorholm seconded the motion; motion carried 5-0.

Discussion:

Mr. Gard stated his opinion that he doesn't believe this intended use blends well with anything to the east and would discourage new growth. He believes it should be further west, out of sight. Dwight agreed with Mr. Gard that this may not be an appropriate area for this type of use, and expressed concerns that the area may end up looking like the Everist pit behind the rest area near Port Neal Road. Robert Brouillette reminded Commissioners that conditions could be put on the CUP to make sure it gets refilled.

Mr. Pylelo asked Rodney Lieber if he had a written document of proposed sale to the City of Sioux City or a gentleman agreement, if the City would want the land for future growth. Mr. Lieber stated there is not a purchase agreement or timeframe for such request.

The question of timeline between excavation and refill of sand pit as brought up by Mr. Brouillette. Mr. Lieber intends a quick turn-around for refill of sand and dirt.

Katie Colling stated summarized the following. City of Sioux City has withdrawn their objection to the project; Mr. Lieber agrees to replace soil from pit, and plans to sell the property to the City if it is needed for future development.

Joann Sadler suggested the focus needs to be on 3 issues:

- Storage
- Resource extraction
- Concrete crushing operation

There was a discussion about reasons not to allow permit and accept the Zoning Commission's recommendations. Mr. Pylelo noted that conditions may be applied to the permit along with applicant/owner will obtain all local, state and federal permits, and such things as fugitive dust control would need ways to report and enforce possible violations, through DNR, Planning and Zoning, and FAA.

Mr. Brouillette says requirements for 1A have been met. Mr. Pylelo emphasized that this area is zoned industrial, which is met to promote industrial development and unfortunately residential use of the area will be eventually phased out. Staff recommendations are same as Zoning Commission.

At this point, the Commission polled members, resulting as follows. Mrs. Colling, Mr. Rohlhom, Mrs. Sadler, and Mr. Brouillette voted yes, with conditions. Mr. Gard voted no.

The following conditions were discussed and agreed upon:

1. Property owner will obtain all local, state and federal permits.
2. Applicant will respond to all fugitive dust complains. Mr. Lieber provided the phone number (605) 422-0543 for complaint reports.
3. Applicant agrees to re-vegetate disturbed soil within 30-60 days with appropriate seasonal material, such as mulch, grass, trees, oats, wheat.
4. Hours of operation shall be 7:00am – 7:00pm Monday through Friday, 7:00am – noon Saturday.
5. Owner will provide necessary site security as appropriate including signage and gate access restriction.

Katie Colling made a motion to approve the Conditional Use Permit with the above conditions. Mr. Rorholm seconded the motion; motion carried 5-0.

Mrs. Sadler made a motion to adjourn the meeting. Mr. Rohrholm seconded the motion; motion carried 5-0.

Meeting was adjourned at 8:35 PM. Next meeting will be 6 PM, February 1st, 2016.